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Motion to dismiss

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Nov. 11. 1879

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 436.

THE BALTIMORE AND POTOMAC RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

JOHN N. TROOK.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JUNE 1, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 436.

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IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 *Declaration.*

In the supreme court of the District of Columbia.

JOHN N. TROOK
vs.
THE BALTIMORE AND POTOMAC RAILROAD Company. } No. . At law.

Declaration.

The plaintiff sues the defendant, a corporation having an office and doing business within the District of Columbia, for that whereas the plaintiff before and at the time of the committing of the grievance hereinafter mentioned was and hath ever since been and still is seized in fee of a certain lot of land on Virginia avenue, between 6th (Sixth) street west and Seventh street west, in the city of Washington, in the said District; and whereas said Virginia avenue before and at and
2 since the time of the committing of the said grievance hereinafter mentioned hath been and still is a common public street and highway for all persons to go, return, pass, and repass in, by, and with coaches, carts, wagons and other vehicles, as well as on foot, at their free will and pleasure, to wit, at Washington, in the District aforesaid, and was used by said plaintiff and others as of right for access to and egress from said lot; yet the said defendants, well knowing the same (the premises), but contriving, &c., to injure the said plaintiff and to incommode and annoy him, together with the public, in the use and enjoyment of said Virginia avenue, and more particularly to prevent the
3 plaintiff's and others' use and enjoyment of that portion of said Virginia avenue upon which said plaintiff's lot abuts to obtain access to and exit from said lot of land at said Washington, on the first day of July, A. D. 1872, and at divers and other times since said date, have wrongfully, &c., obstructed said Virginia avenue by placing thereon freight cars in great numbers, and suffering the same to remain there unreasonably long, at frequent times for twenty-four hours at a time, and by loading and unloading freight in said Virginia avenue and using said street or avenue for the general purpose of a freight yard, and by blocking the way with wagons and carts for the loading and unloading of freight, and have thereby prevented the plaintiff as well as the public from passing and repassing on said Virginia avenue, and more particularly from using that portion of said Virginia avenue on which
4 plaintiff's lot abuts to gain access to or exit from said land, and still obstruct said street or avenue and still prevent him, the plaintiff, as well as the public as aforesaid, and thereby have materially and seriously diminished the value of said land, to the special damage of the plaintiff, he saith, of ten thousand dollars.

And for that whereas the plaintiff before and at the time of the committing of the grievance hereinafter mentioned was and hath ever since been and still is seized and possessed of a certain lot of land on Virginia avenue between 6th (Sixth) street west and Seventh (7th) street west in the city of Washington, in the said District; and whereas said Virginia avenue before and at and since the time of the committing of the said grievance hereinafter mentioned hath been and still is a common public street and highway, &c., and was used by the plaintiff and others
5 as such and for access to said lot; yet the defendant well know-

ing the premises, but contriving, &c., to injure the plaintiff and to incommode and annoy him, &c., on the first day of July, A. D. 1872, and at divers and other times since, have wrongfully, &c., obstructed said Virginia avenue, between said Sixth and Seventh streets, by placing and maintaining three tracks in and along the said portion of the said avenue, and by using the said portion of the said avenue as a freight yard, whereby the plaintiff was, hath been, and is still prevented from the free use of the said avenue, and whereby the value of the said lot is seriously diminished, to the damage of the plaintiff in the sum of ten thousand dollars.

And for that whereas the plaintiff on the first day of July, 1872, was, and hath since been, and still is seized and possessed of a certain
6 lot of land situate and being on Virginia avenue, between 6th and 7th streets west, in the city of Washington, in the said District, the defendants at the said date unlawfully built, and hath ever since unlawfully maintained, and do still unlawfully maintain three railroad tracks on and along the said Virginia avenue, and in front of the plaintiff's said lot of land, and thereby injured plaintiff's said lot of land, to the damage of the plaintiff of the sum of ten thousand dollars.

And the plaintiff claims ten thousand dollars damages and costs.

JAS. G. PAYNE,
Att'y for Plaintiff.

Rule to plead.

The defendant is to plead hereto on or before the first special term of the court occurring twenty days after service hereof, otherwise judgment.

JAS. G. PAYNE,
Att'y for Plaintiff.

7 *Summons.—Issued Mar.* 4, 1875.

In the supreme court of the District of Columbia.

JOHN N. TROOK, PLAINTIFF,
vs.
BALTIMORE & POTOMAC RAILROAD COMPANY, defendant. } At law. No. 13784.

Summons.

The President of the United States to the defendant, greeting:

You are hereby commanded to appear in this court on the first day of its special term occurring 20 days after service of this writ on you to answer the plaintiff's suit, and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness:

D. K. CARTER,
Chief Justice.
R. J. MEIGS, *Clerk,*
By JOB BARNARD,
Asst. Clerk.

NOTE.—The special terms of the court commence on the first Tuesday of every month except August, in which month there is no term of the court.

JAS. G. PAYNE.

8 Served copies of the declaration, notice to plead, and this summons on the defendant, Geo. P. Gilbert, Agt. of Co., the 5 day of March, 1875.

ALEX'R SHARP,
Marshal

9 *Plea.—Filed March 19th, 1875.*

In the supreme court of the District of Columbia.

JOHN N. TROOK
vs.
THE BALTIMORE AND POTOMAC RAILROAD Company. } At law. No. 13784.

Plea not guilty.

And the said defendant, by Daniel Clarke, its attorney, comes and defends this wrong and injury where, &c., and says that it is not guilty of the said supposed wrong and injury laid to its charge, or any part thereof, in manner and form as the said plaintiff has above thereof complained against it, and of this the said defendant puts itself upon the country, &c.

DANIEL CLARKE,
Att'y for Def't.

10 *Joinder of issue.—Filed April 28, 1875.*

In the supreme court of the District of Columbia.

JOHN N. TROOK
vs.
THE BALT. & POTOMAC RAILROAD CO. } 13784. At law.

Joinder of issue.

The plaintiff joins issue upon the defendant's plea.

JAS. G. PAYNE,
Att'y for Plaintiff.

Note of issue.—Filed April 28, 1875.

In the supreme court of the District of Columbia.

JOHN N. TROOK, PLAINTIFF,
vs.
THE BALTIMORE & POTOMAC RAILROAD CO., defendant. } 13784. At law.

Note of issue.

Jas. G. Payne att'y for plaintiffs.
Daniel Clarke, att'y for defendants.
Last pleading filed April 28, 1875.

11 *Motion for leave to file special plea.—Filed Feb.* 1, 1877.

In the supreme court of the District of Columbia.

JOHN N. TROOK
vs.
BALTIMORE & POTOMAC RAILROAD COMPANY. } At law. No. .

Motion for leave to file special plea.

The defendant moves for leave to file a special plea in this case alleging matter that has occurred since the case was put at issue.

STANTON & WORTHINGTON,
Att'ys for Defendant.

12 *Leave to file special plea.*

JOHN N. TROOK, PL'FF,
vs.
THE BALTIMORE & POTOMAC RAILROAD COMpany, def't. } 282. At law. No. 13784.

Leave to file special plea.

Upon argument of the defendant's motion for leave to file a special plea, it is considered that leave be and hereby is granted defendant to file a special plea.

13 *Special plea filed by leave of court.—Filed Feb.* 12, 1877.

In the supreme court of the District of Columbia.

JOHN N. TROOK
vs.
BALTIMORE AND POTOMAC RAILROAD COMPANY. } At law. No. 13784.

Special plea.

And for a further plea, by leave of the court first had and obtained, the defendant says that on or about the 7th day of February, 1871, the defendant, by his deed duly executed and delivered, conveyed the said premises in the declaration mentioned, together with all the improvements, ways, easements, rights, and privileges & appurtenances to said Trook belonging or in anywise appertaining, and all the said Trook's estate, right, title, interest, and claim whatsoever, at law or in equity, of, in, to, or out of said land and premises, unto Daniel L. Eaton, to have and to hold the same unto and to the use of said Eaton,
14 his heirs and assigns, forever, for the purpose of securing the payment of a certain promissory note for $5,600, dated February 7, 1871, and payable one year after said date with interest at the rate of ten per cent. per annum, and said conveyance to said Eaton was made in and upon the trust as therein mentioned and declared, to permit said Trook, his heirs and assigns, to use and occupy said premises, and the rents, issues, and profits thereof to take, use, and apply to and for his and their sole use and benefit until default in payment of said note or any proper costs, charges, and expenses in and about the same, and

upon full payment of said note and of said costs and expenses at any time before the sale in said deed provided for to release and to reconvey said premises unto said John N. Trook, and upon default in the payment of said note or any installment of interest, proper costs or expense,
15 to sell said premises at public auction after advertisement, and upon compliance with the terms of sale to convey the property to the purchaser or purchasers thereof, and of the proceeds of sale to pay the expenses thereof and the amount unpaid on the note and interest, and then to pay the residue, if any, to said Trook.

And the defendant further says that afterward, the said Daniel L. Eaton having died, one George W. Stickney was by due & lawful proceedings substituted as trustee in the place of said Eaton, in respect of the said estate and trust so as aforesaid created by said deed.

And the defendant further says that afterwards default did occur in the payment of said note and in the installment of interest thereon, and that only the interest for one year was paid thereon, and no part of the principal.

And the defendant further says that afterwards and conform-
16 ably to said deed of trust, said premises having been duly advertised and offered for sale, were, to wit, on the 31st day of August, 1875, together with all the easements, rights, privileges, estate, right, title, interest, and claim so as aforesaid theretofore conveyed by said Trook to said Eaton, sold and duly by deed conveyed at and for the sum of $7,329.26 (being less than the amount due on said note), by said Stickney, trustee as aforesaid, to John A. J. Creswell, Robert Purvis, and R. H. T. Leipold, commissioners of the Freedmen's Bank.

And the defendant further says that after the payment of taxes and expenses of sale, the proceeds of such sale were applied on said note, leaving balance due thereon of about $2,000, and that said indebtedness has not been released to or paid by said Trook, but remains due and owing from him to the holder of said note, to wit, the said Creswell, Purvis, and Leipold, commissioners as aforesaid.

17 And the defendant further says that afterwards, to wit, on or about October 29th, 1875, the said Creswell, Purvis, and Leipold, as commissioners as aforesaid, *said* by their deed duly executed and delivered, sold said premises for $8,750 to one Robert Portner, together with all the easements, rights, privileges, estate, right, title, and claim therein and thereto which, as aforesaid, had belonged to and been conveyed by said Trook.

Whereby and wherefore the cause of action herein, if any there be, ceased to be maintainable by, and abated, and became barred, in favor of said Trook, and accrued to and became vested in said Portner.

STANTON & WORTHINGTON,
Att'ys for Defendant.

18 *Mo. to strike out the def't's further or special plea.—Filed Feb.* 14, 1877.

In the supreme court of the District of Columbia.

JOHN N. TROOK
vs.
THE BALTIMORE AND POTOMAC R. R. CO.

Motion to strike out special plea.

Now comes the plaintiff and moves the court to strike out the so-

called amended or further plea of the defendant filed in this cause on the 12th day of February, 1877, for the following reason :

That the said plea purports to be a plea in abatement as to the whole cause of action in the said plaintiff, and the defendant has also pleaded the general issue, that is to say, that it is not guilty of the matters and things alleged in the said declaration.

JAS. G. PAYNE,
Att'y for Plaintiff.

19 *Pl'ff's demurrer to def't's special plea.—Filed Feb.* 14, 1877.

In the supreme court of the District of Columbia.

JOHN N. TROOK
vs.
THE BALTIMORE AND POTOMAC RAILROAD Company. } No. 13784. At law.

Demurrer to special plea.

The plaintiff says that the so-called further or special plea filed herein on the 12th day of February, 1877, is bad in substance.

And the plaintiff states as matter of law to be argued in support of this demurrer, that—

The said plea is informal and insufficient.

The matters and things stated in the said plea are not sufficient to abate this action as to the plaintiff.

The matters and things stated in the said plea are not sufficient for the cause of action herein to accrue to the said Portner.

JAS. G. PAYNE,
Att'y for Plaintiff.

20 *Order overruling motion to strike out, & sustaining demurrer to specia plea.*

JOHN N. TROOK, PL'FF,
vs.
THE BALTIMORE & POTOMAC RAILROAD COMpany, def't. } At law. No. 13784.

Demurrer to plea allowed.

Now comes here as well the plaintiffs as the defendant, by their respective attorneys, and thereupon this cause comes on to be heard on the motion of plaintiff to strike from the files the defendant's special plea, filed by leave of the court, and the same having been heard, is overruled, and the plaintiff thereupon demurs to defendant's said special plea, to which defendant joins, and the same having been heard, and it appearing to the court that the said plea is bad, the demurrer thereto is sustained.

21 *Verdict and judgment in circuit court.*

JOHN N. TROOK, PL'FF,
vs.
THE BALTIMORE & POTOMAC RAILROAD COMpany, def't. } At law. No. 13784.

Judgment.

Now again comes here the parties aforesaid, in manner aforesaid, and the

same jury that was respited on Friday last, who, after the case is given them in charge, on their oath they find the issue aforesaid in favor of the plaintiff, and that the money payable to him by the defendant by reason of the premises is four thousand dollars besides costs. Thereupon it is considered that the plaintiff recover against said defendant four thousand dollars as aforesaid, and $ for his costs of suit and have execution thereof.

Motion for new trial.

And thereupon the defendant moves the court for a new trial on exceptions taken at the trial of the cause.

22 *Def't's motion for new trial & bills of exceptions.—Filed Feb.* 19, 1877.

In the supreme court of the District of Columbia, February 19, 1877.

TROOK
vs.
BALTIMORE & POTOMAC R. R. CO. } At law. No .

Motion for new trial on exceptions.

And now comes the defendants and moves the court to set aside the verdict, and for a new trial in bills of exceptions taken at the trial.

EDWARD L. STANTON,
Attorney for Defendant.

23 *Remittitur by plaintiff of* $1,500 *and order overruling motion for a new trial.*

JOHN N. TROOK, PL'FF,
vs.
THE BALTIMORE & POTOMAC RAILROAD COMpany, def't. } At law. No. 13784:

Motion for new trial overruled.

Now again comes here the plaintiff, by his said attorney, and remits the sum fifteen hundred dollars from the amount of the verdict rendered in this case, and thereupon the defendant's motion for a new trial for excessive damages is hereby overruled.

24 *Bill of exceptions.*

In the supreme court of the District of Columbia.

JOHN N. TROOK
vs.
BALTIMORE AND POTOMAC RAILROAD COMPANY. } At law. No. 13784.

At the trial of this cause the plaintiff, to maintain the issue joined, offered and gave in evidence the several acts of Congress relating to the Baltimore & Potomac Railroad Company, and also gave in evidence tending to show that in May, 1872, he was the owner of lot T in square No. 464, on the south side of Virginia avenue, between 6th and 7th streets southwest, in the city of Washington, District of Columbia, which he had bought in 1849; that in May, 1872, the improvements on said property consisted of a frame house and a one-story brick store;

that the lot contained about 17,500 square feet of ground; that in the spring of 1872 the defendant railroad company laid three tracks
25 consisting of one main track and two sidings, on Virginia avenue, between 6th and 7th streets; that in the month of July, 1872, said defendant began to run its trains over its road, and to use the sidings aforesaid to load and unload freight, and continuously thereafter until the time of beginning this action so used said sidings; that the merchandise so loaded and unloaded at said place was of almost every description; that the freight was delivered into carts, furniture and other wagons; that often there was an accumulation of wagons for the purpose of unloading, especially when vegetables were so unloaded; that this sometimes happened to such an extent as to obstruct the travel on the avenue, and divert the travel from it to other routes; that plaintiff's property was worth from seventy-five cents to one dollar per foot previous to the use by the company of said tracks for a freight delivery; and that the improvements were worth from $2,500 to $5,000;
26 that the property was subdivided into lots, and in August, 1875, was sold for $7,300, according to said subdivision, at public auction, under a deed of trust given in to secure an indebtedness of said Trook to the Freedman's Savings & Trust Company of $5,600 and interest; that said deed of trust was dated the 7th day of February, 1871, and was held by the said Freedman's Saving and Trust Company to secure a loan of $5,600 and interest at 10 per cent. per annum; in which deed Daniel L. Eaton was originally named as the trustee, and after his death George W. Stickney was by proper decree in equity substituted for him as such trustee; that at said sale the property was bought by the Commissioners of the Freedman's Bank; that afterwards ineffectual efforts to sell at a higher sum were made by himself and said commissioners, and in the following October said
27 commissioners sold it to Robert Portner; that the renting of plaintiff's store had also been interfered with by the use of said avenue; that the use of said avenue had been such as to seriously damage the value of said property. And thereupon the plaintiff offered to prove by certain witnesses residing near the locality, and acquainted with the value of property in that section of the city, that, in their opinion, by the presence of the railroad on said avenue, together with all the actual uses of said railroad, said property had been depreciated in the neighborhood of fifty per cent., or sixty-seven per cent. of the value it had prior to the laying of said tracks, and that of said depreciation from 30 to 50 per cent. was due to the use of said avenue for the purpose of a freight delivery.

To the admissibility of said testimony by said witness' as to their said opinions touching depreciation in the value of said property the
28 defendant objected, but the court overruled said objection and admitted said testimony.

At the time of said ruling, and before the giving of the verdict, the counsel for defendant excepted thereto.

The exception was noted by said justice upon his minutes, and the said counsel request said justice to put his seal to this their first bill of exceptions, which is done now for them this seventeenth day of February, 1877.

[SEAL.] D. K. CARTER,
Chief Justice.

And after the signing and sealing of the defendant's first bill of exceptions, which is made part hereof, the plaintiff rested his case.

And thereupon the defendant offered and gave in evidence
29 tending to show that said avenue was and is one hundred and twenty feet wide from curb to curb; that of the three tracks aforesaid in said first bill of exceptions mentioned the southernmost one was fifty feet and nine inches from the south curb line of said avenue; that the northernmost of said three tracks mentioned in said plaintiff's declaration was forty feet and three inches from the north curb line of said avenue; that said southernmost tract had been used comparatively little for the delivery of freight; that there had been little if any freight loaded on any of said tracks; that the use of said tracks at said place was designed to be temporary, and had already been very much diminished; that there were many difficulties, including that of fixing of grades of streets by the
30 municipal authorities, and that had to be determined, and which delayed the procurement of a proper location for a freight yard, but the company from the time it began its operation had a freight depot in Washington, between 9th and 10th streets, the entrance to which depot was from the west of 10th street; that sidings are absolutely necessary in the operation of the railroads of defendant and of all other companies, both for the purpose of making up the trains and for the unloading of freight; that instruction had been given and repeated for the prevention of obstructions on Virginia avenue by reason of the delivery of freight there; that there had been no actual prevention
31 or delaying of the ordinary travel of said street; that the wagons used in the receipt of freight from the cars did not belong to the railroad company, and both by its agents and by the owners of such wagons were required to be used in such manner as not to interfere with the ordinary use of the street by persons passing along the same; that the aforesaid sale to Portner in October, 1875, was for $8,750, and that the value of the plaintiff's property in December, 1870, was $8,500, but in July, 1872, may have been somewhat higher by reason of general enhancement of value of property in the District. This was all the evidence in the case.

And thereupon the court, at the instance of the plaintiff, instructed the jury as follows:

32 "If the jury shall find that from about the month of July, 1872, to the bringing of this action, or during any portion of that period, the defendants used that portion of Virginia avenue lying between Sixth and Seventh streets southwest, and upon which the plaintiff's premises abutted, for the purpose of a freight yard or freight delivery, thereby obstructing the said avenue and diminishing the value of the plaintiff's said property, then the plaintiff is entitled to recover in this action."

To which instruction the counsel for defendant excepted before the giving of the verdict. The exception was noted by the said justice upon his minutes.

And the said counsel for defendant request the said justice to put his seal to this their second bill of exceptions, which is done now for
33 them this seventeenth day of February, 1877.

[SEAL.] D. K. CARTER,
Chief Justice.

And after the signing and sealing of the defendant's second bill of exceptions, which is made part hereof, the court, at the instance of the plaintiff, instructed the jury as follows:

"If the jury shall find that from about the month of July, 1872, to the bringing of this action, or during any portion of that period, the defend-

ant occupied Virginia avenue between Sixth and Seventh streets southwest, and in front of plaintiff's premises, by placing thereon freight cars and keeping the same there an unreasonable time, by loading or unloading and delivering freight, and by using the said part of
34 the said avenue for the general purposes of a freight yard or freight delivery, obstructed the avenue, or so interfered with the use of the said avenue as to diminish the value of the plaintiff's said property, then the plaintiff is entitled to recover."

To which instruction the council for the defendant excepted before the giving of the verdict. The exception was noted by the said justice upon his minutes. And the said counsel for defendant request the said justice to put his seal to this their third bill of exceptions, which is done now for them this seventeenth day of February, 1877.

[SEAL.] D. K. CARTER,
Chief Justice.

And after the signing and sealing of defendant's third bill of exceptions, which is made part hereof, the defendant request the court
35 to instruct the jury as follows: "The defendant has a right under the legislation of Congress to pass and repass over Virginia avenue in making up its trains and shifting its cars, provided this be done only to a reasonable extent and in a reasonable manner; and it may load and unload its cars while temporarily standing for that purpose in the street, provided this be done in such a prudent manner as not unreasonably to interfere with the rights of those having occasion to use the street for the ordinary purpose of travel. If the defendant has not to an unreasonable extent exceeded the exercise of these rights in the acts complained of, then the plaintiff cannot recover."

But the court refused to grant said instruction in said form,
36 but qualified the same by striking out the word "unreasonably," and with said modification gave the instruction to the jury.

And to the refusal of the court to give said instruction in the form in which it was requested, and to the modification made of the same by the court, the counsel for the defendant excepted before the giving of the verdict.

The exception was noted by the said justice upon his minutes, and the said counsel request the said justice to put his seal to this their fourth bill of exceptions, which is done now for them this 17th day of February, 1877.

[SEAL.] D. K. CARTTER,
Chief Justice.

And after the signing and sealing of the defendant's fourth
37 bill of exception, which is made part hereof, the defendant requested the court to instruct the jury as follows:

"If the jury believe from the evidence that there has been neither structural damage to the buildings nor actual physical injury nor harm to the land, and that delay to the public and to the plaintiff in passing along the avenue has been the only direct wrong caused to the plaintiff by the matters set forth in the declaration, and that such wrong resulted in no damage to the plaintiff except contributing during the continuance of the use of the avenue in the way complained of to the prevention of a sale of the property for what it might have sold for before that use of the avenue began, if the jury believes these facts, then the plaintiff cannot recover in this action."

38 But the court refused to give said instruction, and to said re-

fusal the counsel for the defendant excepted before the giving of the verdict.

The exception was noted by the said justice upon his minutes, and the said counsel request said justice to put his seal to this their fifth bill of exceptions, which is now done for them this 17th day of February, 1877.

[SEAL.] D. K. CARTTER,
Chief Justice.

I agree to the signing of this bill of exceptions.

J. G. PAYNE,
For Pl'ff.

39 At the instance of defendant, the court then instructed the jury as follows:

"For any obstruction resulting from the negligent management of waiting wagons not belonging to the railroad company nor under its control the defendant is not to be held liable, even if the wagons came to the avenue to be used in unloading the cars.

"If the jury believe from the evidence that the depreciation of the plaintiff's property, if any there was, resulted from a variety of causes, such as from a general fall in the price of real estate and the legitimate use of the railway, and from other annoyances besides those complained of in the declaration, in addition to an unreasonable and unauthor-
40 ized obstruction of the street, then the jury cannot award as damages to the plaintiff the whole sum in which the property may have been depreciated by the combination of these causes. They must estimate how much of the depreciation is attributable to the single cause of an improper and unreasonable obstruction of the street, and not to either of the other causes. The burden is on the plaintiff to show how much of such depreciation has occurred solely from the unreasonable and improper obstruction of the street by the company; and if there has not been adduced evidence which enables the jury to intelligently and satisfactorily discriminate between the depreciation which has resulted from that particular cause and the depreciation from other causes, then he is entitled to recover only nominal damages. It
41 is not for the jury to reach the estimate by conjectures of their own in the absence of satisfactory evidence enabling them to form an intelligent judgment upon this point.

"If the jury find that what the defendant did was not of a permanent nature, and that so far as the acts were illegal they and their injurious consequences might have been stopped by the defendant or by the public authorities at his instance, and may still be stopped, then the plaintiff is not entitled in any event to recover the same damages that he would for depreciation of his property by a permanent cause."

And the court further instructed the jury that the plaintiff's rights to damages, if any, in this action was limited by the period of his ownership of the said property.

42 *Motion to set aside verdict on ground of excessive damages.—Filed Feb. 21, 1877.*

In the supreme court of the District of Columbia.

TROOK
vs.
BALTIMORE & POTOMAC RAILROAD COMPANY. } At law. No. 13784.

Motion for new trial for excessive damages.

Without waiving his motion for a new trial on bill of exceptions, de-

fendant moves the court to set aside the verdict in this case on the ground of excessive damages.

STANTON & WORTHINGTON,
Attorneys for Defendant.

43 Proceedings before the supreme court of the District of Columbia, in general term, commencing Monday, April 15, 1878.

FRIDAY, *June* 7, 1878.

Session resumed pursuant to adjournment.

Present, Chief Justice Cartter, and Justices Olin, Wylie, and MacArthur.

JOHN N. TROOK, PLAINTIFF,
vs.
THE BALTIMORE & POTOMAC RAILROAD Company, def't. } At law. No. 13784.

And now again come here as well the plaintiff as the defendant, by their respective attorneys; whereupon, because it appears to the court here that there is no error, either in the record or proceedings, or in the judgment of the circuit court; therefore it is considered that the said judgment be and the same is hereby affirmed, the defendant's motion for a new trial upon exceptions to the rulings of the circuit court upon the trial notwithstanding.

44 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between John N. Trook, plaintiff, and the Baltimore & Potomac Railroad Company, defendant, a manifest error hath happened, to the great damage of the said railroad company, as by said defendant's complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: Therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the United States, this 23d day of June, in the year of our Lord 1878, and of t Independence of the United States the 102d.

R. J. MEIGS,
Clerk Supreme Court District of Columbia,
By R. J. MEIGS, JR.,
Ass't Clk, &c.

DISTRICT OF COLUMBIA, *to wit:*

To John N. Trook:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States to be holden at Washington on the first Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein John N. Trook is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

Due service acknowledged this 24 day of June, 1878.

JAMES G. PAYNE,
For Pl'ff.

45 In the supreme court of the District of Columbia, the 13 day of June, 1878.

JNO. N. TROOK
vs.
B. & P. R. R. Co. } At law. No. 13784. In error.

Know all men by these presents that we, Joseph K. Sharp, George M. Knox, & H. Browning, are bound unto the above-named John N. Trook in the sum of five thousand dollars ($5,000.00), to be paid to the said John N. Trook, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 13 day of June, 1878.

Whereas the above-named Baltimore and Potomac Railroad has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Baltimore and Potomac Railroad Company shall prosecute its said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

J. K. SHARP. [SEAL.]
GEO. M. KNOX. [SEAL.]
H. BROWNING. [SEAL.]

Sealed and delivered in presence of—
J. H. MCEVOY.
ELPHONZO YOUNG.
As to H. Browning—
J. S. MCCENEY.

JUNE 21ST, 1878.

Approved.

MACARTHUR.

Filed June 21, 1878.

46 *Authentication of record.—Clerk's certificate.*

CLERK'S OFFICE,
Supreme Court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of

record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 25th day of June, 1878.

[SEAL.]

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Assistant Clerk.

Justice's certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 25th day of June, 1878.

[SEAL.]

D. K. CARTTER,
Chief Justice.

Clerk's certificate to justice's official character.

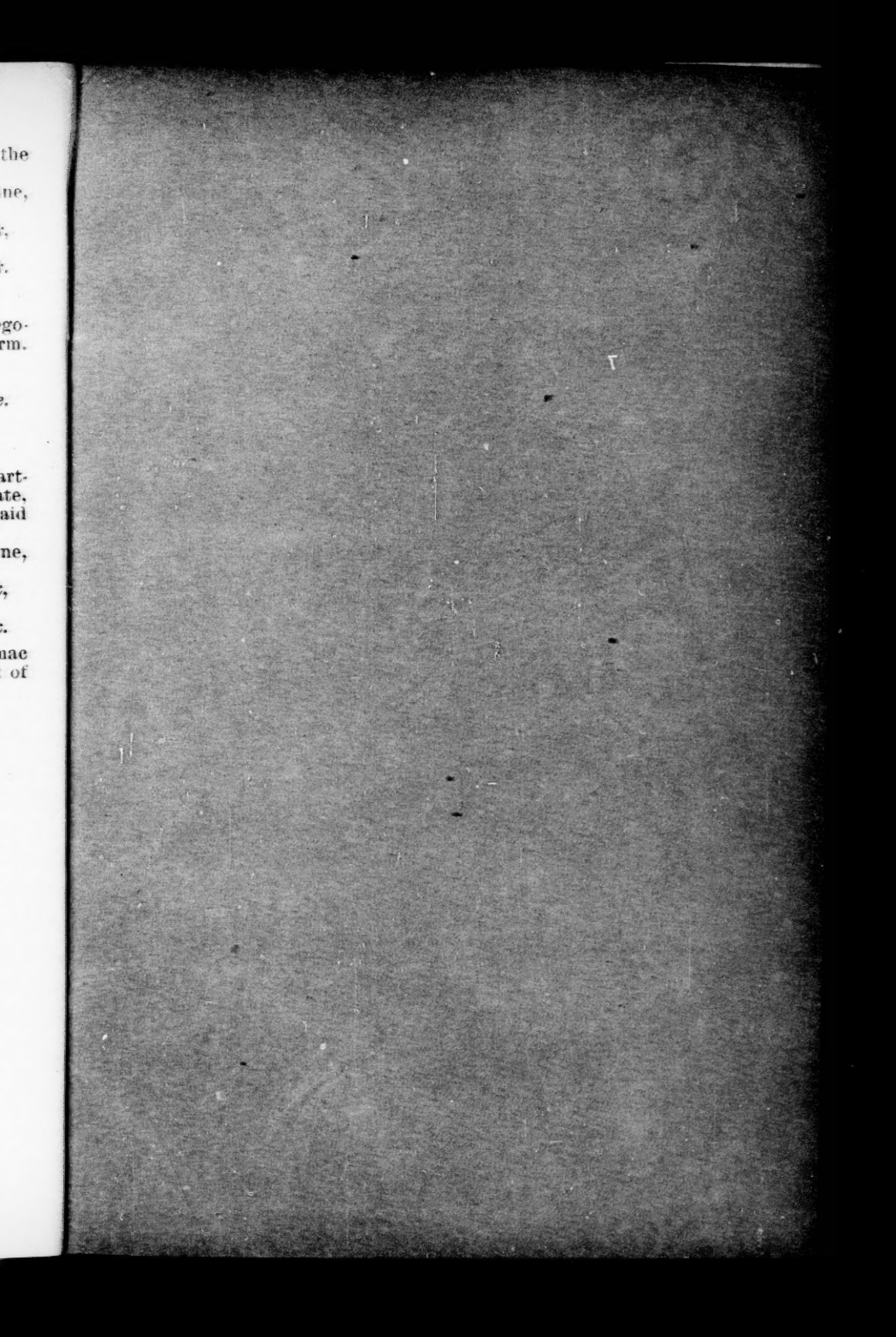
I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 25th day of June, 1878.

[SEAL.]

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Assistant Clerk.

(Indorsement on cover:) No. 436. The Baltimore and Potomac Railroad Company, plaintiff in error, vs. John N. Trook. District of Columbia sup. c't. Filed 1st June, 1878.



IN THE SUPREME COURT OF THE UNITED STATES.

The Baltimore and Potomac Railroad Company
Plaintiff in Error.
vs
John N. Trook,
Defendant in Error.

No. 436. October Term 1879

—o—

Error to the Supreme Court of the District of Columbia.

—o—

MOTION TO DISMISS.

Now comes the defendant in Error, by his Attorney and moves the Court to dismiss the writ of Error in this cause for the reason that the value of the matter in dispute does not exceed the sum of Twenty five hundred dollars.

Jas. G. Payne,
Attorney for Defendant in Error.

Take notice that on Monday the 10th day of November 1879, at the opening of the Court or as soon thereafter as the same can be heard, I shall call up the foregoing motion in the Supreme Court of the United States.

Jas. G. Payne,
Attorney for Defendant in Error.

Service acknowledged Oct. 11, 1879.

Enoch Totten,
Attorney for Plaintiff in Error.

SUPREME COURT UNITED STATES.

The Baltimore and Potomac Railroad Company, Plaintiff in Error. vs John N. Trook, Defendant in Error.	No. 436, Oct. T. 1879.

It is hereby stipulated and agreed, that the extracts from the record in this cause, hereto annexed, are correct and they may be taken as ~~suit~~ cited in the consideration of the motion made by the defendant in error, to dismiss for want of jurisdiction, under the provisions of the act of February 25, 1879; (98 U. S. 398,) and that the motion be submitted without argument.

Enoch Totten,
For Plaintiff in Error.

Jas. G. Payne,
For Defendant in Error.

EXTRACT FROM RECORD.

February 19, 1877.	Verdict and judgment for $4000.
February 21, 1877.	*Motion* to set aside verdict and and judgment on the ground of excessive damages.
March 31, 1877.	Plaintiff remits $1500—from amount of the verdict, and the motion to set aside judgment on the ground of excessive damages overruled.
April 17, 1877.	Bills of exception filed.
June 7, 1878	Hearing in General Term and judgement affirmed.
June 21, 1878.	Bond filed by defendant for writ of Error.

February 11, 1877.
John N. Trook, Plaintiff.
vs
The Baltimore and Potomac Railroad Company Defendant.
} At Law, No. 13,784 Cal. 110.

Now again come here the parties aforesaid, in manner aforesaid, ane the same jury that was respited on Friday last, who, after the case is given them in charge, on their oath say that they find the issue aforesaid in favor of the Plaintiff, and that the money payable to him

by the Defendant, by reason of the premises, is four thousand dollars besides costs. Therefore it is considered that the Plaintiff recover against said defendant, four thousand dollars as aforesaid, and $ for his costs of suit, and have execution thereof.

And thereupon the defendant moves the Court for a new trial on exceptions taken at the trial of the cause.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Trook,
vs
Baltimore and Potomac
Railroad Company. | At Law. No. 13,784

Without waiving his motion for a new trial on bill of exceptions, defendant moves the Court to set aside the verdict in this case on the ground of excessive damages.

Stanton and Worthington,
Atty's. for Defendant.

March 31, 1877.

John N. Trook, Plaintiff,
vs
The Baltimore and Potomac
Railroad Company, Defendant. | At Law, No. 13,784

Now again comes here the Plaintiff by his said Attorney, and remits the sum of fifteen hundred dollars from the amount of the verdict rendered in this case, and thereupon the defendants motion for a new trial for excessive damages, is hereby overruled.